BLANK
PAGE

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 21 1966
JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

October Term, 1965
No. 1152.

LIFE ASSURANCE COMPANY OF PENNSYLVANIA,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA,
Appellee

MOTION TO DISMISS OR AFFIRM

GEORGE W. KEITEL
Deputy Attorney General
EUGENE J. ANASTASIO
Deputy Attorney General
WALTER E. ALESSANDRONI
Attorney General
Counsel for Appellee

State Capitol
Harrisburg, Pa.

Murrelle Printing Company, Law Printers, 201-203 Lockhart Street, Sayre, Pa.

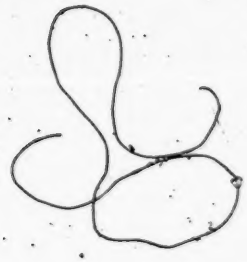
BLANK PAGE

SUBJECT INDEX

	Page
Motion To Dismiss or Affirm:	
Statement	2
Question Presented	3
Summary of Argument	4
Argument:	
1. The Act of 1961 does not violate equal protection or due process of the 14th Amendment, even though premiums received from the sale of accident and health policies by domestic life insurance companies are taxed, while premiums received from the sale of accident and health policies by domestic casualty insurance companies are not taxed	5
2. The Act of 1961 does not place an unreasonably discriminatory burden of state taxation upon appellant in comparison to that placed upon its foreign competitors	9
3. The equal protection clause and the due process clause of the 14th Amendment to the United States Constitution are not violated by the Act of 1961, when it imposes tax on all domestic life insurance companies and exempts all other domestic insurance companies	10
4. Even if the Tax Act of 1961 bore no fiscal relation to the benefits extended appellant by Pennsylvania, the due process or equal protection clauses of the 14th Amendment to the Constitution would not be violated	12
Conclusion	15

CASE CITED

Concordia Fire Insurance Company v. Illinois
292 U.S. 535 (1934) 6



IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1965

No. 1152

Life Assurance Company of Pennsylvania,

Appellant

v.

Commonwealth of Pennsylvania,

Appellee

MOTION TO DISMISS OR AFFIRM

Appellee moves that the present appeal be dismissed or that the final judgment of the Supreme Court of Pennsylvania be affirmed on the ground that the appeal does not present substantial federal questions.

STATEMENT

The Commonwealth accepts the history of the case to the extent as stated in Appellant's Jurisdictional Statement. The Commonwealth wishes to point out specifically that the Appellant is a domestic life insurance company formed pursuant to the "Insurance Company Law of 1921", the Act of May 17, 1921, P. L. 682, 40 P.S. §341 et seq., and hence a creature of the Commonwealth subject to its regulatory statutes and tax statutes.

The Gross Premiums Tax Act, the Act of February 21, 1961, P. L. 33, 72 P.S. §§2270.1 to 2270.10, imposes a tax on the gross premiums received from policies sold within Pennsylvania by two different categories of insurance companies. This is accomplished by defining the term "insurance company", as follows:

> "Insurance company means every insurance company, association or exchange, incorporated or organized by or under the laws of other states or foreign governments, and engaged in transacting insurance business of any kind or classification within this Commonwealth; and every life insurance company, or limited life insurance company incorporated or organized by or under any law of this Commonwealth . . . 72 P.S. §2270.1."

Note, that the Act imposes tax (1) on every foreign insurance company whether it be a life company, or a fire company, or any other kind of insurance company, and (2) on a certain type of domestic insurance company, i.e., all life insurance companies. However, in both instances, only premiums received from policies sold within Pennsylvania are taxable.

QUESTION PRESENTED

Are the rights of the Appellant, a domestic life insurance company, under the Equal Protection and Due Process Clause of the 14th Amendment to the United States Constitution, violated by a Pennsylvania tax on gross premiums received from business done in Pennsylvania, when the tax is imposed on such premiums received by all foreign insurance companies and all domestic life insurance companies, but not by domestic non-life insurance companies?

SUMMARY OF ARGUMENT

None of the issues raised by Appellant in his Jurisdictional Statement raise a substantial federal question. All of these issues were raised and argued before the Pennsylvania Supreme Court, and Justice Roberts' Opinion, relying on many prior decisions of this Court, specifically deals with and disposes of each and every one of these issues. Inasmuch as the questions raised concern a domestic company objecting to a tax imposed by the state of incorporation, such questions are primarily state-orientated and have little or no federal application. Therefore, Appellant's appeal should be dismissed and the judgment entered by the Pennsylvania Supreme Court affirmed.

ARGUMENT

1. The Act of 1961 Does Not Violate Equal Protection or Due Process of the 14th Amendment, Even Though Premiums Received From the Sale of Accident and Health Policies by Domestic Life Insurance Companies Are Taxed, While Premiums Received From the Sale of Accident and Health Policies by Domestic Casualty Insurance Companies Are Not Taxed

Appellant contends that since it is in competition with other types of insurance companies in the accident and health area, the Commonwealth cannot tax the premiums received by one without taxing the premiums received by the other. This argument of Appellant is without foundation.

The Gross Premiums Tax Act does not directly impose a tax on premiums received from certain types of insurance policies, i.e., accident and health policies. The classification made by the Act involves the type of companies, i.e., domestic life insurance companies are taxed while other domestic insurance companies are not taxed. These companies are incorporated and regulated under different provisions of the insurance laws of Pennsylvania and are separately classified thereunder. See Insurance Company Law of 1921, supra (40 P.S. §341), and Insurance Department Act of 1921, 40 P.S. §1, et seq.

As Justice Roberts of the Court below, said in his Opinion (page 32 of the Jurisdictional Statement):

> ". . . For the purpose of taxation, the Act of 1961 creates a separate classification of life insurance companies which, as we have previously stated, is not proscribed by either the federal or state Constitution. Under the Act, a tax is imposed upon all the premiums received by insurance companies so classified. *The fact that the tax also reaches to premiums derived from accident and health insurance policies is but an incidental effect of the overall classification.*" (Emphasis supplied.)

Appellant cites the case of *Concordia Fire Insurance Company v. Illinois*, 292 U. S. 535 (1934), to support his contentions that the Gross Premiums Tax Act is unconstitutional because it imposes a tax on the accident and health premiums received by life insurers and not on the same premiums received by a casualty insurance company. Justice Roberts dismissed this argument thusly (page 36 of the Jurisdictional Statement):

> ". . . After careful consideration of the majority opinion in Concordia, we can not conclude that the Supreme Court of the United States intended therein to overrule by implication many previous decisions and to establish a rule that any tax imposed upon one class but not upon another which may partially compete with it is arbitrary per se. Our conclusion is reinforced by the subsequent decision in Allied Stores of Ohio, Inc. v. Bowers, 358 U. S. 522, 79 S. Ct. 437 (1959). In

Allied Stores, the tax was sustained although the classification made therein had just such competitive implications as is presently complained of with respect to the Act of 1961. Most significantly in sustaining the tax, the Supreme Court relied upon numerous pre-Concordia decisions in which the classifications made resulted in competitive disadvantages. Among the authorities so relied upon were: State Bd. of Tax Comm'rs. of Indiana v. Jackson, 283 U. S. 527, 51 S. Ct. 540 (1931); Heisler v. Thomas Colliery Co., 260 U. S. 245, 43 S. Ct. 83 (1922); Rast v. Van Deman & Lewis Co., 240 U. S. 342, 36 S. Ct. 370 (1916); Quong Wing v. Kirkendall, 223 U. S. 59, 32 S. Ct. 192 (1912); American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 21 S. Ct. 43 (1900).

• • • • • • • •

"Moreover, Mr. Justice Cardozo, joined by Justices Brandeis and Stone, in dissenting in part in Concordia, succinctly demonstrated the weakness of the position advanced by appellant: 'A tax upon the receipts of a business is not invalid as of course because some forms of business are hit and others are exempt. To bring about that result the assailant of the tax must be able to satisfy the court that the classification had its origin in nothing better than whim and fantasy, a tyrannical exercise of arbitrary power. This is the heavy burden that the appellant must sustain. Is it a whimsical and fantastic act to tax foreign fire insurance companies upon all their net receipts, including those derived from casualty premiums, when no such tax is imposed upon the

> receipts of insurance companies that do a casualty business only? If so, the arbitrary quality of the division must have its origin in the fact that the activities of the one class overlap to some extent the activities of the other. But plainly there is no rule that overlapping classes can never be established in the realm of taxation. . . . The recognition of such a rule means that a department store may not be taxed on the net receipts of its business unless all the many activities thus brought under a single roof are taxed in the same way when separately conducted. There must be a tax on the business of the draper, the jeweler, the shoemaker, the hatter, the carpet dealer, and what not. For the same reason, the proprietor of a retail market dealing in meats and groceries and vegetables and fruits will then escape, at least proportionately, a tax upon receipts if the statute does not cover the business of the shopkeeper who derives a modest income from the sale of peanuts and bananas. There are few taxes upon earnings that would pass so fine a sieve.' Concordia Fire Ins. Co. v. Illinois, 292 U. S. 535, 550, 554-55, 54 S. Ct. 830, 836, 837-38 (1934). (Citations omitted.)"

Thus, the imposing of the tax initially on domestic life insurance companies is the vital factor. The point that the premiums on which the tax is based may (or may not) include accident and health premiums, has no bearing on the constitutional issue.

2. The Act of 1961 Does Not Place an Unreasonably Discriminatory Burden of State Taxation Upon Appellant in Comparison to That Placed Upon Its Foreign Competitors

---

Appellant here argues and has argued before the various Pennsylvania courts hearing this case that the Act of 1961, violates the Due Process and Equal Protection Clause of the 14th Amendment to the United States Constitution when it subjects to tax all foreign insurance companies and all domestic life insurance companies. He bases his contention on the fact that domestic life insurance companies are also subject to two other state taxes, i.e., the Capital Stock or Franchise Tax and the Corporate Net Income Tax, while foreign insurance companies are not subject to these last two taxes. Justice Roberts in the Opinion found on page 23 of the Jurisdictional Statement succinctly disposes of this argument by Appellant by stating:

> "We can not agree. The Act of 1961 imposes precisely the same tax upon foreign insurance companies as is imposed upon domestic life insurance companies, such as appellant. What appellant seeks is a determination that a tax which makes no distinction in its treatment of appellant and its foreign competitors is unconstitutional because of burdens placed upon domestic life insurance companies by other taxing measures. Such an argument is misdirected. The Act of 1961 makes no classification between appellant and its foreign competitors and, therefore, cannot be said

to violate either the federal or state constitutions by reason of classifications made by other legislation. As to appellant and its foreign competitors, the Act of 1961 is both equal and uniform."

In a footnote to his Opinion, Justice Roberts went further and said:

> "We are unable to find any authority for the proposition that a concededly non-discriminatory tax becomes constitutionally tainted merely because other taxes to which the appellant is subject accord distinctive treatment to various classes of taxpayers."

The reasoning and statement of Justice Roberts are precisely the position of the Commonwealth on this point and need no elaboration. Appellant has failed to demonstrate any error in these statements.

---

3. The Equal Protection Clause and the Due Process Clause of the 14th Amendment to the United States Constitution Are Not Violated by the Act of 1961, When It Imposes Tax on All Domestic life Insurance Companies and Exempts All Other Domestic Insurance Companies

---

Appellant next contends that the Act of 1961 is violative of these same constitutional provisions, Due Process and Equal Protection, by reason of the fact that domestic life insurance companies are taxed thereunder whereas domestic non-life companies are not similarly burdened. Justice Roberts' Opinion in

the Court below disposed of this argument by saying (page 24 of the Jurisdictional Statement):

> "While the Act, for purposes of imposing a gross premiums tax, distinguishes between domestic life and all other domestic insurance carriers, such distinction does not in and of itself rise to a constitutional violation. See Allied Stores of Ohio, Inc. v. Bowers, 358 U. S. 522, 79 S. Ct. 437 (1959); State Board of Tax Comm'rs. of Indiana v. Jackson, 283 U. S. 527, 51 S. Ct. 540 (1931); Jones & Laughlin Tax Assessment Case, 405 Pa. 421, 175 A. 2d 856 (1961); Commonwealth v. Girard Life Ins. Co., 305 Pa. 558, 158 Atl. 262 (1932); Heisler v. Thomas Colliery Co., 274 Pa. 448, 118 Atl. 394, aff'd. 260 U. S. 245, 43 S. Ct. 83 (1922); Germania Life Ins. Co. v. Commonwealth, 85 Pa. 513 (1877); Coe v. Duffield, 185 Pa. Superior Ct. 532, 138 A. 2d 303 (1958). By necessity a wide discretion must be conceded to the Legislature in the classification of various businesses or occupations for purposes of taxation. State Bd. of Tax Comm'rs. of Indiana v. Jackson, 283 U. S. 527, 537, 51 S. Ct. 540, 543 (1931); Brown-Forman Co. v. Kentucky, 217 U. S. 563, 30 S. Ct. 578 (1910); see Allied Stores of Ohio, Inc. v. Bowers, 358 U. S. 522, 79 S. Ct. 437 (1959); Heisler v. Thomas Colliery Co., 274 Pa. 448, 118 Atl. 394, aff'd. 260 U. S. 245, 43 S. Ct. 83 (1922). The equal protection clause imposes no iron rule of equality prohibiting that degree of flexibility and variety appropriate to reasonable schemes of taxation. Allied Stores of Ohio, Inc. v. Bowers, 358 U. S. 522, 525, 79 S. Ct. 437, 440 (1959)."

The Constitution as interpreted by this Court and the Courts of Pennsylvania is clear in this regard. It is no violation of the Constitution for a State Legislature to impose a tax on domestic life insurance companies and not on domestic non-life companies.

---

4. Even if the Tax Act of 1961 Bore No Fiscal Relation to the Benefits Extended Appellant by Pennsylvania, the Due Process or Equal Protection Clauses of the 14th Amendment to the Constitution Would Not Be Violated

---

Appellant states on page 13 of his Jurisdictional Statement that the Supreme Court of Pennsylvania did not make a "direct holding" on this point. The Commonwealth submits that this point was considered by the Court. In connection with this, see page 26 of the Jurisdictional Statement:

> "In effect appellant asserts that the equal protection clause requires that the classification between domestic life and domestic non-life insurance companies made by the Act of 1961 bear some reasonable relationship to the end sought to be obtained by that Act. While the principle that there must be a reasonable relationship between the classification made by the legislation and its purpose is undoubtedly true in some contexts, it has no application to a measure whose sole purpose is to raise revenue.[11] The applica-

[11] The state may not classify for purposes of regulation unless such classification bears a reasonable relationship to

tion of appellant's theory would lead not only to the conclusion that the entire insurance industry must be taxed identically or not at all, a conclusion in conflict with our decisions in Commonwealth v. Girard Life Ins. Co., 305 Pa. 558, 158 Atl. 262 (1932), and Germania Life Ins. Co. v. Commonwealth, 85 Pa. 513 (1877), but would also require that all industries with the same general resources be taxed identically without regard to distinctions between them which may prompt a rational legislative determination to tax one and not another. Neither the federal nor state constitution imposes such a straitjacket upon the Legislature. See Allied Stores of Ohio, Inc. v. Bowers, 358 U. S. 522, 79 S. Ct. 437 (1959); State Bd. of Tax Comm'rs. of Indiana v. Jackson, 283 U. S. 527, 51 S. Ct. 540 (1931). So long as the classification imposed is based upon some standard capable of reasonable comprehension, be that standard based upon ability to produce revenue

---

the purpose of the regulation. However, where the state seeks to raise revenue, it need not justify any distinction drawn between the taxed and non-taxed with respect to the raising of revenue so long as some other reasonable basis for treating the various classes differently exists. Where such distinction exists, the wisdom of the legislative policy of taxing one class and not another is not a matter for the courts. "Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and an earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." Chicago, Burlington & Quincy R. Co. v. McGuire, 219 U.S. 549, 569, 31 S. Ct. 259, 263 (1911).

> or some other legitimate distinction, equal protection of the law has been afforded. See Allied Stores of Ohio, Inc. v. Bowers, supra, at 527, 79 S. Ct. at 441; Brown-Forman Co. v. Kentucky, 217 U. S. 563, 573, 30 S. Ct. 578, 580 (1910)."

Since Appellant is a domestic corporation, there is a direct fiscal relation to the benefits extended by the Commonwealth of Pennsylvania. However, even if this were not true, the legislation would not be unconstitutional.

CONCLUSION

In effect, Appellant's Jurisdictional Statement does not raise any substantial federal questions which were not already considered and disposed of by the Supreme Court of Pennsylvania. Hence, the Commonwealth submits that the appeal of the Appellant should be dismissed and the judgment of the Pennsylvania Supreme Court be affirmed.

Respectfully submitted,

GEORGE W. KEITEL
Deputy Attorney General
EUGENE J. ANASTASIO
Deputy Attorney General
WALTER E. ALESSANDRONI
Attorney General
Counsel for Appellee

END